

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) 18-CR-1006
)
KEVIN HEIM,)
)
Defendant.)

APPEARANCES:

ATTORNEY DREW OLIVER INMAN, U.S. Attorney's Office,
111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401,
appeared on behalf of the United States.

ATTORNEY JOHN BISHOP, 222 Third Avenue S.E., Suite 299,
Armstrong Center, Cedar Rapids, Iowa 52401, appeared on
behalf of the Defendant.

SENTENCING HEARING,

HELD BEFORE THE HON. LINDA R. READE,

on the 10th day of September, 2018, at 111 Seventh Avenue
S.E., Cedar Rapids, Iowa, commencing at 1:54 p.m., and
reported by Patrice A. Murray, Certified Shorthand
Reporter, using machine shorthand.

Transcript Ordered: 10/10/18
Transcript Completed: 10/22/18

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
111 Seventh Avenue S.E., Box 4
Cedar Rapids, Iowa 52401-2101
(319) 286-2338

1 (The following proceedings were held in open court.)

2 THE CLERK: In Criminal Matter 18-CR-1006,
3 United States of America versus Kevin John Heim, on for a
4 sentencing hearing. The United States Probation Office
5 is represented by Daren Schumaker.

6 Counsel, please state your appearances.

7 MR. INMAN: Good afternoon, Your Honor. Drew
8 Inman on behalf of the United States.

9 MR. BISHOP: John Bishop on behalf of defendant
10 Kevin Heim.

11 THE COURT: Mr. Heim, do you recall being in
12 court on -- let me get the date -- May 7, 2018, and
13 pleading guilty to Count 1 of the indictment, charging
14 you with conspiracy to distribute 500 grams or more of a
15 mixture or substance containing methamphetamine?

16 THE DEFENDANT: Yes.

17 THE COURT: The penalty for this offense is a
18 prison term. Under the statute, it has to be at least
19 10 years and could be for the rest of your life.
20 Supervised release after any term of imprisonment must be
21 at least 5 years and could be for the rest of your life.
22 You are not eligible for a probationary sentence. Your
23 fine could be as much as \$10 million. And you'd have to
24 pay a \$100 special assessment.

25 Do you remember your attorney talking to you about

1 these statutory penalties?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you are in
4 court today for the purpose of being sentenced on your
5 plea of guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: Is your plea still guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: The Court has received and read the
10 presentence investigation report, Document 79, filed
11 August 6th of 2016. I've received sentencing memos filed
12 by the attorneys on behalf of their respective clients.
13 Included in Mr. Bishop's sentencing memo is a motion for
14 a downward variance, and it has to do with scoring the
15 purity level in the drug table in the guidelines. Other
16 than what's in the official records of the court, I have
17 no independent information concerning this case or
18 Mr. Heim.

19 Mr. Inman, have you had the opportunity to review
20 the presentence investigation report?

21 MR. INMAN: I have, Your Honor.

22 THE COURT: After so doing, any remaining
23 objections to the scoring of the advisory guideline
24 sentence?

25 MR. INMAN: It's scored appropriately, Your

1 Honor.

2 THE COURT: Mr. Bishop, have you and Mr. Heim
3 been through the presentence investigation report?

4 MR. BISHOP: We have, Your Honor.

5 THE COURT: And will you make a record, please,
6 as to how you went about doing that?

7 MR. BISHOP: Yes, Your Honor. I provided a
8 copy of the report to Mr. Heim. He at the time was being
9 held at the Fayette County Jail, so I traveled there to
10 go over it with him in person. We had a few concerns, a
11 few objections that we made. We actually did also speak
12 several times over the phone to further discuss what we
13 wanted to do with respect to the presentence
14 investigation report, so that was beyond meeting with him
15 in person. So we did go over things rather thoroughly
16 and came up with the objections that we did make in this
17 case. The objections that we did make had no impact on
18 the sentencing guideline calculation in the report, I
19 would note for the Court.

20 THE COURT: All right. So as far as you're
21 concerned, the advisory guidelines are correctly scored
22 under the guidelines?

23 MR. BISHOP: Yes, Your Honor.

24 THE COURT: All right. And Objection 1,
25 Objection 2, and Objection 3, and Objection 4 in the

1 offense conduct you don't need the Court to decide
2 because it doesn't affect the sentence, correct?

3 MR. BISHOP: No, I don't believe so, Your
4 Honor.

5 THE COURT: All right. Then the Court accepts
6 the computation of the advisory guidelines. I'm on Page
7 9, Paragraph 27. The base offense level is 36. Mr. Heim
8 is being held accountable for 1.74 grams of ice
9 methamphetamine, and that is within a range of at least
10 1.5 kilograms but less than 4.5 kilograms of ice, so it's
11 at the low end of that range. 3 levels are added because
12 defendant admits he was a manager or supervisor and the
13 criminal activity involved 5 or more participants or was
14 otherwise extensive. That gives us an adjusted offense
15 level of 39. 2 levels are subtracted for acceptance of
16 responsibility.

17 Mr. Inman, what is the government's position with
18 regard to the 1 additional level?

19 MR. INMAN: We move for that additional level,
20 Your Honor.

21 THE COURT: And that is granted. So we are
22 left with total offense level 36. He's criminal history
23 category IV. Guideline range of imprisonment, 262 months
24 to 327 months, followed by 5 years of supervised release.
25 Probation is not available because of the mandatory

1 minimum. The fine, 40,000 to \$10 million. \$100 in
2 special assessments.

3 Just out of an abundance of caution, Mr. Bishop,
4 there were special conditions of supervision at Page 22
5 of the presentence investigation report in Paragraphs 97
6 through 100. There were no objections filed, so may I
7 assume that Mr. Heim does not object to those special
8 conditions?

9 MR. BISHOP: Yes, you may, Judge.

10 THE COURT: Thank you. Then I'm ready to hear
11 from the parties. There is a motion for a variance, and
12 so I think that's the place to start. Mr. Bishop.

13 MR. BISHOP: Thank you, Your Honor. I think
14 the motion sort of speaks for itself, and I made it
15 fairly brief, but essentially the argument, as has been
16 adopted I think by Judge Strand, is that there really is
17 very limited basis for differentiating between ice
18 methamphetamine and methamphetamine mix, and so the Court
19 should sort of, as has been already done to a certain
20 extent in crack cocaine and powder cocaine cases,
21 eliminate that difference and essentially what we are
22 requesting is the Court to grant a variance that will
23 essentially sentence Mr. Heim based on the meth mix
24 calculation rather than the ice methamphetamine. And I
25 think I did make that calculation in my motion briefly.

1 That, we believe, would result in a total offense level
2 of 32 and a new guideline range of 168 to 210 months, and
3 that's what we are asking the Court to consider
4 sentencing Mr. Heim within this afternoon.

5 THE COURT: Response.

6 MR. INMAN: Thank you, Your Honor. Initially,
7 I had an inclination to put on testimony, Your Honor, for
8 a rational justification for the actual and ice
9 methamphetamine guidelines, basically, a response to the
10 arguments put forward in *Nawanna* and *Harry* by other
11 judges in this district, but with further input from my
12 office, I'm not going to do that. I will simply stand
13 upon the United States sentencing memo.

14 Your Honor, just because other judges in the
15 district have made those policy decisions, that does not
16 bind this Court, obviously, and I don't need to tell Your
17 Honor that. And even if you were inclined to go along
18 with that policy determination, as to this defendant,
19 Mr. Heim specifically, I believe a guidelines range would
20 be appropriate based on the 3553(a) factors alone. And I
21 would be prepared to go more into that when we argue
22 about the guideline range itself.

23 THE COURT: All right. Let's go ahead then
24 and -- well, I'll just say with regard to the motion to
25 vary downward based on a policy disagreement, the Court

1 is aware that it has the power to vary downward from the
2 advisory guideline range if the Court is convinced that
3 it must do so in order to arrive at a sentence that is
4 sufficient but not greater than necessary to achieve the
5 goals of sentencing. While case law provides that a
6 judge may vary based on his or her own personal opinion
7 and disagreement with the advisory guidelines, I've never
8 sentenced in that fashion. My personal opinions carry no
9 weight when I'm sentencing, except my judgment in
10 applying the 3553(a) factors. I'm in every sentencing
11 looking for the sentence that is sufficient but not
12 greater than necessary to achieve the goals of
13 sentencing, and I follow the guidelines unless there is a
14 reason not to that is persuasive and that convinces me,
15 again, that I have to go below the advisory guidelines to
16 get to the sentence that's sufficient but not greater.

17 Most of the sentencing law is not based on empirical
18 data. Statutory ranges are not. The guideline
19 provisions are not. And yet they're the law passed by
20 Congress or, in the case of guidelines, approved by
21 Congress during the yearly amendment process where, if
22 Congress doesn't act, the changes become law. And so my
23 personal opinion matters not, and I don't find a basis
24 for a variance with the ice methamphetamine mixture or
25 substance methamphetamine, because if you think about it

1 rationally, first of all, there are very few labs in the
2 United States that can produce high purity
3 methamphetamine in the 90-plus range, and I think ice is
4 considered 80 percent pure or better, so most of the time
5 you are talking about potential for international drug
6 trade. The other thing is that the higher the purity,
7 the closer you are to the source, so people like Mr. Heim
8 are not merely distributing drugs to support their own
9 habit exclusively or they're not low-end dealers. He's
10 close to the top because of the purity; it hasn't been
11 cut for resale. So long story short, I'm not going to
12 vary. There's no basis for it in my opinion when I apply
13 the law.

14 Okay. So let's talk about -- let me just add
15 one case law to this because I don't want it to be said
16 that I didn't consider the sixth factor, disparity of
17 18 USC 3553(a). In the case of *Bolinger*, 893 F.3d 1123,
18 Eighth Circuit, 2018, the defendant argued that "The
19 district court failed to give adequate weight to the
20 sentence imposed by other judges in other districts for
21 similar offenses. The Eighth Circuit concluded that
22 although a district court should consider the need to
23 avoid sentencing disparities among similarly situated
24 defendants, the sentencing practices of one district
25 court are not a reference point for other courts." And

1 they were quoting from the case *United States versus*
2 *Soliz*, S-O-L-I-Z, 857 F.3d 781, at 783, Eighth Circuit,
3 2017. So let the record show I did consider the argument
4 made by Mr. Bishop and the variance -- it was couched in
5 a variance argument, and I decided to follow the law as I
6 understand it.

7 All right. So, Mr. Inman, in terms of disposition,
8 what's your thought on the appropriate sentence?

9 MR. INMAN: Thank you, Your Honor. Before I
10 begin, I should note the United States will have a motion
11 to make under seal following the determination of the
12 appropriate guideline.

13 THE COURT: Well, I've already determined the
14 guideline, so if this is a 5K motion, it actually should
15 have been brought before I even talked about variance, so
16 is it a departure under 5K?

17 MR. INMAN: Yes, Your Honor. I apologize for
18 that.

19 THE COURT: Okay. Because we do the
20 guidelines, including departures, and then after we do
21 that, we move to variances, if appropriate.

22 (A discussion was held and sealed by the Court.)

23 (The following was held in open court.)

24 THE COURT: We're now back in open court, and
25 the record is no longer under seal for the balance of

1 this hearing. And, Mr. Inman, I'm now ready to hear from
2 you on any additional record you want to make on
3 disposition.

4 MR. INMAN: Thank you, Your Honor. I'll try to
5 be as brief as I can. The PSR is complete. I just want
6 to point out some facts from it. The bottom line is the
7 defendant made three trips to Dallas, Texas, in a very
8 short span of time. They were one after the other. The
9 first trip the defendant makes, it's 20 ounces of ice
10 from this Jose Roberto Vazquez, the source of supply. He
11 returns; he sells that in a frenzy with his codefendant
12 Ms. Weidenbacher. Afterwards, immediately sends back two
13 people to pick up more ice methamphetamine from
14 Mr. Vazquez. Thankfully, that ice never made it back
15 because it was allegedly pitched out the window before
16 these people returned. Finally, the defendant and
17 Ms. Weidenbacher go back to Dallas one last time and, of
18 course, they receive about 36 ounces of ice
19 methamphetamine or just under a kilo. They're stopped
20 when they return to Dubuque County.

21 I want to point out something from the PSR in
22 regards to these transports of ice methamphetamine; Your
23 Honor has already noted it. The source of supply for
24 this methamphetamine appears to be a very dangerous
25 person. Mr. Vazquez had Ms. Weidenbacher send him a

1 picture of her driver's license before he accepted her as
2 part of the conspiracy. She also had to throw a brick
3 through Mr. Vazquez's exgirlfriend's car window to prove
4 her legitimacy. This is from Paragraph 13 in the PSR.
5 Ms. Weidenbacher was surprised that Mr. Vazquez already
6 knew details about her grandchildren's names, her
7 parents' names, her daughter, et cetera. The point being
8 the defendant was dealing with an extremely dangerous
9 source of drugs, and apparently possibly jeopardizing
10 other people's safety through his desire to get ice
11 methamphetamine from Mr. Vazquez.

12 Also, Mr. Vazquez was supplying at least part of
13 this ice methamphetamine by sending up semi trucks from
14 Mexico into the United States with ice methamphetamine.
15 That's Paragraph 12 of the PSR.

16 As far as the defendant's history and
17 characteristics, his criminal history shows -- Your
18 Honor, I realize this is dated but in Paragraph 54,
19 defendant got a completely suspended sentence even though
20 he stole over \$100,000 from his grandma, who he was
21 living with at the time. Again, I realize that's a
22 little over 10 years old. Defendant has two OWI
23 convictions, one in 2010, one in 2015. Both times his
24 breath alcohol concentration was extremely high, well
25 above the legal limit. Defendant got slaps on the wrist

1 for that, just minimal jail time. And defendant's
2 forgery and most recent burglary charges, again, received
3 apparently time-served sentences, suspended sentences on
4 those.

5 That all said, this is not the most egregious case
6 or conspiracy I've seen. It's not the highest quantity
7 of methamphetamine I've seen. It's not the worst
8 criminal history. I think somewhere in the lower end of
9 the guidelines would be appropriate, at Your Honor's
10 wisdom and discretion. Thank you.

11 THE COURT: Mr. Bishop.

12 MR. BISHOP: Thank you, Your Honor. We're
13 asking the Court to sentence Mr. Heim at the bottom of
14 the range, 170 months. This is a drug weight that's
15 close to the bottom of the 36 level. Mr. Heim doesn't
16 have much of any history with respect to drugs. His
17 methamphetamine use began at the age of 30, and,
18 unfortunately, he sort of dove right into the process of
19 selling it, but it's something that I think he quickly
20 realized he was in over his head. He started to owe very
21 quickly large sums of money to his source in Dallas,
22 Texas, was being threatened by that individual. That's
23 part of the reason codefendant Crosby was coming to
24 Dubuque, was to ensure that, hey, the money is coming
25 back here, and that's something that I think Mr. Heim, as

1 I say, realized *I'm in over my head with this individual.*
2 I think he was hoping to get out of the conspiracy.
3 Obviously, that did not take place and instead he wound
4 up here. But in any event, these are poor choices that
5 he's going to suffer the consequences for.

6 He has a decent work history. He's made money in
7 the past through legitimate means and, to me, that always
8 tells me that that's an individual that, once he
9 completes his prison sentence, will be able to get back
10 into being a productive member of society.

11 He has a young child. He's got the support of his
12 father, his girlfriend, so he has ties and supports, I
13 guess, in the community that will also help him to
14 succeed once he gets out.

15 He's still a fairly young man, and certainly he'll
16 serve more than 10 years in this case, so he'll be well
17 on his way to middle age when he gets out and, as I say,
18 will hopefully be able to restart fairly quickly and
19 fairly productively once he does.

20 So, Your Honor, we would ask the Court for the low
21 end of the range and the bottom end of the range would be
22 preferable obviously, so we're asking the Court to impose
23 a sentence of 170 months.

24 THE COURT: Mr. Heim, this is the time in the
25 proceeding when you have a chance to speak. You don't

1 have to say anything unless you want to.

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. Then the Court is ready
4 to make its findings. In arriving at a disposition, I
5 have carefully considered each and every factor under 18
6 USC 3553(a). The Court won't talk about each and every
7 factor necessarily, but rest assured, each has been very
8 carefully considered.

9 The basic nature and circumstances of the offense
10 are really not in dispute. As mentioned and as discussed
11 with Mr. Bishop, there are some details that were
12 objected to in the offense conduct that really don't have
13 any bearing on where the Court will sentence today, so
14 there's no need for me to rule on those particular
15 objections.

16 Mr. Heim is 31, single, with one dependent child.
17 In terms of his physical and mental condition, he does
18 have some back issues, and I agree, probably from wear
19 and tear from physical labor that he's performed.

20 In terms of his substance abuse, he definitely has
21 an alcohol problem. He's got two operating while
22 intoxicated in the fairly recent past. The problem with
23 OWIs is the risk that it poses to the community. When
24 drunk drivers are out there, they kill and injure
25 innocent people and law enforcement officers who have a

1 sworn duty to protect the public from drunk drivers. I'm
2 very cognizant of that, and Mr. Heim needs to know he'll
3 have a no-alcohol condition as part of his supervised
4 release. And if he's out on the road drinking and
5 driving and again jeopardizing the safety of the public,
6 there's a very high probability that he'll be returned to
7 prison. He needs to know that so he can work on his
8 issues, not only alcohol, of course, but methamphetamine.
9 Methamphetamine intoxication also causes death and injury
10 on the roads.

11 He does have employment, but it's been sort of up
12 and down, at least if you go by the reports of the Social
13 Security Administration at Paragraph 85. He had some
14 really high earning years and some that weren't great.
15 He definitely does have the skills to support himself and
16 to earn a good wage, and he'll be required to have
17 full-time, lawful employment on supervised release,
18 unless he can establish a physical or mental disability.

19 In terms of his criminal history, we've talked about
20 that. What we haven't talked about is his history of
21 noncompliance while subject to correctional supervision.
22 While I think he does have the ability to change, the
23 fact of the matter is, that he committed this offense
24 while he was still under a criminal justice sentence in
25 several Dubuque County cases, and received 2 points extra

1 on his criminal history because of that. I think he is
2 at high risk to recidivate based on his performance thus
3 far. I hope that I'm wrong about that and that he has no
4 further issues when he's released from imprisonment.

5 The sentence I'm going to impose today will reflect
6 the seriousness of the offense and promote respect for
7 the law and be a just punishment. It will afford
8 adequate deterrence to criminal conduct and protect the
9 public from further crimes of the defendant, as well as
10 providing the defendant with needed education, vocational
11 training, medical care, or other correctional treatment
12 in the most effective manner.

13 I did consider Factor 6, the need to avoid
14 unwarranted sentence disparities among defendants with
15 similar records found guilty of similar conduct, and I've
16 made my record on that and denied a variance for the
17 reasons indicated.

18 The Court finds the sentence that is sufficient but
19 not greater than necessary to achieve the goals of
20 sentencing is a sentence of 170 months, which is the
21 bottom of the new guideline range, after we calculated
22 that new range under the 5K1.1 departure. So it is the
23 judgment of the Court that Kevin John Heim is hereby
24 committed to the custody of the Bureau of Prisons to be
25 imprisoned for 170 months.

1 I recommend that he be designated to a Bureau of
2 Prisons' facility in close proximity to his family,
3 commensurate with his security and custody classification
4 needs. I recommend that he participate in the Bureau of
5 Prisons' 500-hour Comprehensive Residential Drug Abuse
6 Treatment Program or an alternate substance abuse
7 treatment program.

8 Upon release from imprisonment, he'll be on
9 supervised release for 5 years. While on supervised
10 release, he must comply with the following mandatory
11 conditions: He must not commit any federal, state, or
12 local crimes; he must not unlawfully possess a controlled
13 substance; he must refrain from any unlawful use of a
14 controlled substance; and cooperate in the collection of
15 a DNA sample.

16 I order that he comply with the standard conditions
17 of supervision set out in the judgment order. He must
18 comply with all of the special conditions set forth in
19 the special conditions of supervision section, Paragraphs
20 97 through 100 of the presentence investigation report,
21 and those paragraphs are incorporated by this reference.

22 Mr. Heim, two words of unsolicited advice.
23 Remember, you're a convicted felon; therefore, under
24 federal and state law, it's against the law for you to
25 possess for any reason a firearm or ammunition. This

1 prohibition continues for the rest of your life. It's
2 not your practice to have anything to do with firearms.
3 I'm not inferring that. I'm just advising you of one of
4 the limitations once you become a felon.

5 I'm also advising you that if you are convicted of a
6 subsequent felony drug offense in either state or federal
7 court, and sentenced in a United States District Court
8 for a felony drug offense, you could be subject to
9 increased penalties, up to and including a mandatory
10 minimum term of life imprisonment. So that is one
11 incentive to have nothing further to do with drug
12 dealing.

13 I order that you pay to the United States a special
14 assessment of \$100. That's due and payable immediately.
15 I find you do not have the ability to pay a fine or make
16 community restitution.

17 You are remanded to the custody of the United States
18 Marshal.

19 Count 2 is still out there.

20 MR. INMAN: Your Honor, the United States moves
21 to dismiss Count 2.

22 THE COURT: Count 2 is dismissed on motion of
23 the United States.

24 Mr. Heim, I'm now going to talk to you about your
25 rights to appeal. If you disagree with this judgment and

1 commitment, you can appeal. Your appeal would go to the
2 Eighth Circuit Court of Appeals. Here's how you appeal.
3 You have to file a written notice of appeal with the
4 Clerk of Court here in the United States District Court
5 for the Northern District of Iowa at Cedar Rapids, Iowa.
6 If you do not file a written notice of appeal within the
7 next 14 days, you forever give up your right to challenge
8 this judgment and sentence. If you would like to appeal
9 and you cannot afford the services of an attorney, the
10 Court will appoint an attorney to represent you on
11 appeal.

12 Mr. Inman, anything else on this case?

13 MR. INMAN: No, Your Honor. Thank you.

14 THE COURT: Mr. Bishop?

15 MR. BISHOP: No, Your Honor.

16 THE COURT: Mr. Heim, have you understood
17 everything I talked about?

18 THE DEFENDANT: Yes.

19 THE COURT: And, Officer Schumaker, have I made
20 any errors that you are aware of?

21 PROBATION OFFICER: Not that I am aware of,
22 Your Honor.

23 THE COURT: All right. This concludes the
24 hearing. Thank you.

25 (Proceedings concluded at 2:34 p.m.)

C E R T I F I C A T E

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a hearing was held before the Honorable Linda R. Reade; that I reported in shorthand the proceedings of said hearing, reduced the same to print to the best of my ability by means of computer-assisted transcription under my direction and supervision, and that the foregoing transcript is a true record of all proceedings had on the taking of said hearing at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 22nd day of October, 2018.

/s/ Patrice A. Murray
Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court, NDIA
111 Seventh Avenue S.E., Box 4
Cedar Rapids, Iowa 52401-2101

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